REMARKS

In the Office Action, the Examiner rejected claims 1, 3, and 5 under 35 U.S.C. §

102(e) as being anticipated by BUFFAM (U.S. Patent No. 6,185,316); rejected claim 2

under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM in view of KANEVSKY

et al. (U.S. Patent No. 5,897,616); rejected claim 4 under 35 U.S.C. § 103(a) as being

unpatentable over BUFFAM in view of FUJIMOTO et al. (U.S. Patent No. 5,893,057);

rejected claims 6 and 7 under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM in

view of GLAZE et al. (U.S. Patent No. 6,320,974); rejected claims 8-10 under 35 U.S.C.

§ 103(a) as being unpatentable over BUFFAM in view KANNEVSKY et al., and further

in view of SAWYER et al. (U.S. Patent No. 6,324,271); rejected claim 11 under 35

U.S.C. § 103(a) as being unpatentable over BUFFAM in view of KANEVSKY et al.,

further in view of SAWYER et al. and still further in view of FUJIMOTO et al.; and

rejected claims 12-22 under 35 U.S.C. § 103(a) as being unpatentable over SAWYER et

al. in view of WEISS (U.S. Patent No. 4,998,279).

Claims 1-22 were pending in the present application prior to the above

amendments. Claims 1-13 and 16 have been amended to improve form. No new matter

has been added. Reconsideration and allowance of all claims 1-22 in view of the

following remarks are respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 1, 3, and 5 were rejected under 35 U.S.C. § 102(e) as being allegedly

anticipated by BUFFAM. Applicant respectfully traverses.

Independent claim 1, as amended, recites a method of validating a user for a

transaction to be effectuated by using a transaction card. The method includes

configuring a biometric profile for said user, the biometric profile including a plurality of

biometric samples received from the user, where the plurality of biometric samples

corresponding to a plurality of questions. The biometric profile is associated with an

indicium assigned to said transaction card. The user is biometrically interrogated when

the transaction is attempted by the user, where the biometrical interrogation includes

querying the user for a biometric response associated with a randomly selected one of the

plurality of questions. The biometric response generated with respect to said user in

response to the biometrical interrogation is monitored and it is determined if the

biometric response matches a biometric sample in the biometric profile corresponding to

the randomly selected one of said plurality of questions. If so, the user is approved for

the transaction.

A proper rejection under 35 U.S.C. § 102 requires that a single reference teach

every aspect of the claimed invention either explicitly or impliedly. Any feature not

directly taught must be inherently present. See M.P.E.P. § 2131. BUFFAM does not

disclose the combination of features recited in Applicant's claim 1.

For example, BUFFAM does not disclose querying the user for a biometric

response associated with a randomly selected one of the plurality of questions, as recited

in claim 1. This feature of claim 1 was added in the present amendment. Accordingly,

the Office Action does not specifically address this feature in the context of the claim

rejection under 35 U.S.C. § 102(e). As remarked in the Examiner's rejection of claim 2

(discussed in detail below), BUFFAM fails to disclose or suggest the use of random

biometric samples in querying a user (Office Action, pg. 3). In view of this assertion,

Applicant respectfully requests the withdrawal of the 102(e) rejection of claim 1, as amended.

Claims 3 and 5 depend from claim 1 and are therefore not anticipated by BUFFAM for at least the reasons set forth above with respect to claim 1. Reconsideration and withdrawal of the pending 102(e) rejections are respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 103

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM in view of KANEVSKY et al. Applicant respectfully submits that the cited combination of BUFFAM and KANEVSKY et al. fails to disclose or reasonably suggest the combination of features recited in Applicant's claim 2.

A proper rejection under 35 U.S.C. § 103 requires that three basic criteria be met. First, there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest *each and every claim feature*. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed..Cir. 1991).

Claim 2 depends from claim 1 and, therefore, implicitly includes each and every feature of claim 1. As discussed above, claim 1 recites the feature of querying the user

for a biometric response associated with a <u>randomly selected one of the plurality of</u> <u>questions</u>. Claim 2 recites a refinement of this feature. Accordingly, the following discussion will address the pending rejection in light of the broad feature of claim 1. Applicant respectfully submits that the cited combination of BUFFAM and KANEVSKY et al. fails to disclose or reasonably suggest this feature. In particular, the Examiner admits that BUFFAM fails to disclose or suggest querying the user for a response associated with a randomly selected one of the plurality of biometric samples (Office Action, pg. 3). The Examiner cites KANEVSKY et al. to remedy this deficiency. Applicant respectfully submits that KANEVSKY et al. likewise fails to disclose or reasonably suggest the recited feature.

In making the rejection, the Examiner relied on col. 3, lines 28-32 and 39-44 of KANEVSKY et al. for allegedly disclosing matching voice samples taken from answers to random questions (Office Action, pg. 4). Applicant respectfully submits that this section of KANEVSKY et al. does not disclose or suggest querying the user for a response associated with <u>a randomly selected one of the plurality of questions</u>, where the questions correspond to a plurality of biometric samples stored in the user's profile, as required by claim 2.

At col. 3, lines 28-44, KANEVSKY et al. discloses:

...(d) querying the speaker with at least one random (but questions could be non-random) question (but preferably more than one random question) based on the information contained in the accessed database; (h) taking a voice sample from the utterances of the speaker and processing the voice sample against an acoustic model attributable to the speaker candidate; (i) generating a score corresponding to the accuracy of the decoded answer and the closeness of the match between the voice sample and the model...

This section of KANEVSKY et al. discloses using random questions to elicit a voice response from a user. The received voice response may then be separately analyzed for accuracy and its closeness to an acoustic model attributable to the user. This section of KANEVSKY et al. does not disclose eliciting a response associated with a randomly selected one of a plurality of questions corresponding to a plurality of biometric samples received from the user during configuration. KANEVSKY et al. is silent with respect to the specific manner in which the acoustic model is generated. However, this section of KANEVSKY et al. clearly indicates that a single acoustic model is compared against the received sample and that the acoustic comparison is conducted separately from the accuracy portion of the analysis. Furthermore, KANEVSKY et al. discloses that conventional voice recognition (not voice authentication) is initially performed to determine question accuracy (see, e.g., col. 6, lines 34-65). Following an accuracy determination, the received sample is compared against previously built user model (see, e.g., col. 6, line 66 – col. 7, line 14). Clearly, KANEVSKY et al. does not disclose eliciting a response associated with a <u>randomly selected one of a plurality of questions, where the questions correspond to a plurality of biometric samples</u> received from the user during configuration. For at least the foregoing reasons claim 2 is patentable over the cited combination of BUFFAM and KANEVSKY et al.

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM in view of FUJIMOTO et al. Applicant respectfully traverses.

Claim 4 depends from claim 1. Applicant respectfully submits that the disclosure of FUJIMOTO et al. does not remedy the deficiency of BUFFAM as set forth above with respect to claim 1, and as further described with respect to claim 2. Therefore, claim 4 is

patentable over the cited combination of BUFFAM and FUJIMOTO et al. for at least

reasons similar to those given above with respect to claim 1.

Claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over

BUFFAM in view of GLAZE et al. Applicant respectfully traverses.

Claims 6 and 7 depend from claim 1. Applicant respectfully submits that the

disclosure of GLAZE et al. does not remedy the deficiencies of BUFFAM as set forth

above with respect to claim 1, and as further described with respect to claim 2.

Therefore, claims 6 and 7 are patentable over the cited combination of BUFFAM and

GLAZE et al. for at least the reasons given above with respect to claim 1.

Claims 8-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over

BUFFAM in view of KANEVSKY et al., and further in view of SAWYER et al.

Applicant respectfully traverses.

Claims 8-10 depend from claim 1. Applicant respectfully submits that the

disclosures of KANEVSKY et al. and SAWYER et al. do not remedy the deficiencies of

BUFFAM as set forth above with respect to claim 1, and as further described with respect

to claim 2. Therefore, claims 8-10 are patentable over the cited combination of

BUFFAM, KANEVSKY et al., and SAWYER et al. for at least reasons similar to those

given above with respect to claim 1.

Claim 11 was rejected under 35 U.S.C. § 103(a) as being unpatentable over

BUFFAM in view of KANEVSKY et al., further in view of SAWYER et al., and still

further in view of FUJIMOTO et al. Applicant respectfully traverses.

Claim 11 depends from claim 1. Applicant respectfully submits that the

disclosures of KANEVSKY et al., SAWYER et al., and FUJIMOTO et al. do not remedy

the deficiencies of BUFFAM as set forth above with respect to claim 1, and as further described above with respect to claim 2. Therefore, claim 11 is patentable over the cited combination of BUFFAM, KANEVSKY et al., SAWYER et al., and FUJIMOTO et al. for at least reasons similar to those given above with respect to claim 1.

Claims 12-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over SAWYER et al. in view of WEISS. Applicant respectfully traverses.

Independent claim 12 recites a fraud prevention method for use in a transaction-card-based system having a conventional authentication process. The method includes determining, by utilizing said conventional authentication process, if a fraudulent transaction is being attempted in said transaction-card-based system by a user using a transaction card. If a fraudulent transaction is determined, the user is biometrically interrogated to obtain a biometric sample from the user. Upon obtaining the biometric sample, access is denied to the user for the transaction in the transaction-card-based system if the biometric sample does not match an entry stored in a biometric profile database inherently associated with the transaction card's owner. SAWYER et al. and WEISS, whether alone or in any reasonable combination, do not disclose or suggest the combination of features recited in Applicant's claim 12.

For example, WEISS does not disclose or suggest determining, by using a conventional authentication process, if a fraudulent transaction is being attempted, and, if so, biometrically interrogating the user to obtain a biometric sample from the user, as required by claim 12. The Examiner relied upon col. 4, lines 57-62 of SAWYER et al. for allegedly disclosing determining whether a fraudulent transaction is being attempted and, if so, requiring a biometric sample from the user (Office Action, pg. 6). Applicant

respectfully submits that this section of SAWYER et al. does not disclose or suggest

determining, by using a conventional authentication process, whether a fraudulent

transaction is being attempted, and, if so, biometrically interrogating the user to obtain a

biometric sample from the user, as recited in claim 12.

At col. 4, lines 57-62, SAWYER et al. discloses:

> The above mentioned CLID problem is solved by having the caller's identity
> securely tied to an electronic token, e.g., a Smart card possessed by the caller.
> The use of this token may optionally be augmented by a PIN number or biometric
> verification step to protect against loss of the card and its subsequent fraudulent
> use by the finder.

This section of SAWYER et al. discloses that a Smart card may be augmented by

using biometric verification. This section of SAWYER et al. does not disclose or

reasonably suggest determining, by using a conventional authentication process, whether

a fraudulent transaction is being attempted, and, if so, biometrically interrogating the user

to obtain a biometric sample from the user, as recited in claim 12. Rather, under the

disclosed implementation of SAWYER et al., a card requiring biometric interrogation

would require such interrogation each time it was used, rather than after a potential

fraudulent attempt has been identified. The disclosure of WEISS does not remedy the

deficiency of SAWYER et al. with respect to this feature. For at least the foregoing

reasons claim 12 is patentable over the cited combination of SAWYER et al. and WEISS.

Claim 13-15 depend from claim 12. Therefore, Applicant submits that claims 13-

15 are patentable over SAWYER et al. and WEISS for at least the reasons given above

with respect to claim 12.

Independent claim 16, as amended, recites an access control system for use with a

transaction-card-based scheme. The access control system includes a network operable

with a terminal, the terminal for interacting with a user in association with a transaction

card. A controller is disposed in the network to query the user when the user attempts a

transaction using the transaction card. A server is disposed in the network to respond to

messages from the controller with respect to querying the user. A profile database is

coupled to the server, the profile database having a plurality of biometric samples

inherently coupled to the user, where the plurality of biometric samples relate to a

plurality of questions, and where the biometric samples are associated with an indicium

assigned to the transaction card such that when the user attempts the transaction, the

controller queries the user for a response relating to a randomly selected one of the

biometric samples and if the response does not match a corresponding entry in the profile

database, access is denied to the user for the transaction. The cited combination of

SAWYER et al. and WEISS fail to disclose or reasonably suggest each and every feature

of claim 16.

For example, SAWYER et al. and WEISS fail to disclose or suggest a controller

that queries the user for a response relating to a randomly selected one of the biometric

samples. Applicant notes that the above-recited feature of claim 16 is newly added by

way of the above amendments. The cited combination of SAWYER et al. and WEISS do

not disclose or suggest this feature. Accordingly, reconsideration and withdrawal of the

rejection of claim 16 are respectfully requested.

Claim 17-22 depend from claim 16. Therefore, Applicant submits that claims 17-

22 are patentable over SAWYER et al. and WEISS for at least the reasons given above

with respect to claim 16.

CONCLUSION

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise which could be eliminated through discussions with Applicants' representative, the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 13-2491 and please credit any excess fees to such deposit account.

Respectfully submitted,

HARRITY & SNYDER, L.L.P.

By:

Robin C. Clark
Registration No. 40,956

Date: June 8, 2005

11240 Waples Mill Road
Suite 300
Fairfax, Virginia 22030
(571) 432-0800